

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Minnesota Democratic Farmer Labor
Party,

Complainant,

vs.

Minnesota Senate Republican Caucus,
Senator David Senjem, Senator Al
DeKruif, Senator Chris Gerlach, Senator
Joe Gimse, Senator Gretchen Hoffman,
Senator Benjamin Kruse, Senator Ted
Lillie, Senator Geoff Michel, Senator
Carla Nelson, Senator Claire Robling,
Senator Ray Vandeveer, and Senator
Pam Wolf,

Respondents.

**NOTICE OF DETERMINATION OF
PRIMA FACIE VIOLATION
AND
NOTICE OF AND ORDER FOR
EVIDENTIARY HEARING**

TO: PARTIES

On Tuesday, February 14, 2011, the Minnesota Democratic-Farmer-Labor Party (DFL) filed a Campaign Complaint with the Office of Administrative Hearings alleging that the Minnesota Senate Republican Caucus and the above-named individual Senators violated Minnesota Statutes §§ 211B.04 and 211B.09 of the Fair Campaign Practices Act in connection with a "Senate GOP Legislative Update" prepared for distribution at the Republican Precinct Caucuses on February 7, 2012.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on February 14, 2012. A copy of the complaint and attachments were sent by U.S. mail to the Respondents on February 15, 2012.

After reviewing the Complaint and attached exhibits, the undersigned Administrative Law Judge has determined that the Complaint sets forth a *prima facie* violation of Minn. Stat. § 211B.04, but fails to set forth *prima facie* violations of Minn. Stat. § 211B.09. This determination is described in more detail in the attached Memorandum.

THEREFORE, IT IS HEREBY ORDERED AND NOTICE IS GIVEN THAT:

1. the Complainant's claim under § 211B.09 is dismissed without prejudice; and

2. the Complainant's claim under § 211B.04 will be scheduled for a prehearing conference and evidentiary hearing to be held at the Office of Administrative Hearings.

The evidentiary hearing must be held within 90 days of the date the complaint was filed, pursuant to Minn. Stat. § 211B.35.

You will be notified of both the dates and times of the prehearing conference and evidentiary hearing, and the three judges assigned to it, within approximately two weeks of the date of this Order. The evidentiary hearing will be conducted pursuant to Minnesota Statutes § 211B.35. Information about the evidentiary hearing procedures and copies of state statutes may be obtained online at <http://mn.gov/oah/> and www.revisor.leg.state.mn.us.

At the evidentiary hearing, all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judge. Parties should bring with them all evidence bearing on the case with copies for the Administrative Law Judge and opposing party.

After the evidentiary hearing, the Administrative Law Judges may dismiss the complaint, issue a reprimand, or impose a civil penalty of up to \$5,000. The panel may also refer the complaint to the appropriate county attorney for criminal prosecution. A party aggrieved by the decision of the panel is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Administrative Law Judge must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 600 North Robert Street, P.O. Box 64620, St. Paul, MN 55101, or call 651-361-7900 (voice) or 651-361-7878 (TTY).

Dated: February 17, 2012

s/Beverly Jones Heydinger

BEVERLY JONES HEYDINGER
Administrative Law Judge

MEMORANDUM

The Complaint alleges that the Minnesota Senate Republican Caucus (MNSRC) and the named individual Senators used Senate staff and resources to prepare a “Senate GOP Legislative Update” for distribution at the February 7, 2012, Republican Precinct Caucuses.¹ The “Legislative Update” included the MNSRC logo and web addresses for the MNSRC’s Facebook account, Twitter account, and website. The MNSRC website includes pages soliciting contributions to the Senate Victory Fund and soliciting volunteers for “campaign opportunities.”²

The Complaint alleges that the Legislative Updates were not provided to all constituents but instead were provided exclusively to individuals attending the Republican Party Precinct Caucuses.³ The Complaint maintains that the Legislative Updates meet the definition of “campaign material” and were required to include a disclaimer identifying the name and address of the person or committee causing the material to be prepared or disseminated. The Complainant also alleges that “upon information and belief,” Respondents compelled Minnesota Senate staff to design, draft and prepare the Legislative Updates in violation of Minn. Stat. § 211B.09.

Standard of Review

To set forth a *prima facie* case that entitles a party to a hearing, the party must either submit evidence or allege facts that, if unchallenged or accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.⁴ For purposes of a *prima facie* determination, the tribunal must accept the facts alleged as true and the allegations do not need independent substantiation.⁵ A complaint must be dismissed if it does not include evidence or allege facts that, if accepted as true, would be sufficient to prove a violation of chapter 211A or 211B.⁶

Minn. Stat. § 211B.04 claim

Minnesota Statutes § 211B.04 makes it unlawful to prepare or disseminate most types of campaign material without prominently including the name and address of the “person or committee causing the material to be prepared or disseminated” “Campaign material” is defined, in relevant part, as “any literature, publication, or material that is disseminated for the purpose of influencing voting at a primary or other election.”⁷ The “Legislative Update” is a two-page document that promotes the Senate Republican majority’s perceived legislative accomplishments in 2011, discusses proposed legislative initiatives for the 2012 session, and thanks those attending the Republican precinct caucuses for their involvement. The Complaint states that the

¹ Complaint Ex. A.

² Copy of screen shots of MNSRC website, unmarked but presumably Ex. D, attached to Complaint.

³ Complaint Ex. B

⁴ *Barry v. St. Anthony-New Brighton Independent School District*, 781 N.W.2d 898, 902 (Minn. App. 2010).

⁵ *Id.*

⁶ *Id.*

⁷ Minn. Stat. § 211B.01, subd. 2.

Legislative Updates were tailored for each of the individual Senators named as Respondents and included each Senator's name and photograph.⁸ An example of the two-page Legislative Update (Complainant's Exhibit A) appears below:



2012 Session

SENATE GOP Legislative Update

First Budget Surplus Projection in 5 Years

Minnesota's Management and Budget Office announced a \$875 million surplus for the state in its November forecast. This is a great budget improvement from the \$5.2 billion deficit the Senate Republicans inherited in the 2011 Legislative Session. By making tough choices on the spending side of the budget, prioritizing the state's needs, providing regulatory reform and enhancing job growth – the Senate Republican majority delivered for Minnesota.

Performance is important and how we should be judged. The 2011 budget was set to grow to \$39 billion – the Governor presented a \$37.5 billion budget – and at the end of the unnecessary special session the Governor agreed to the Republican's \$34 billion budget! This was a win for the taxpayers of Minnesota – and obviously a win for the state's budget.

This budget surplus provides not only opportunities as we move ahead, but allows the 2012 Session to focus on needed government reforms and efficiency.

**The Senate
Republican
majority
delivered for
Minnesota.**

Redistricting to be unveiled on Feb 21st

The Constitution of Minnesota gives responsibility to the Legislature to redraw the legislative district lines every 10 years, after the census is taken. This is to get back to the Constitutional adage of "...one person, one vote."

In the 2011 Legislative Session, the Republican Senate and House met the redistricting responsibility only to have the bill vetoed by Governor Dayton. This unfortunate veto leaves the redistricting responsibility in the hands of the courts. They will unveil the new district lines on February 21.

All 134 House and 67 Senate Districts will be redrawn and all senators and representatives will be up for election on General Election Day, November 6.

THANK YOU
for joining this
Republican
precinct caucus!

Exhibit
A

Senator
RAY VANDEVEER



⁸ Complaint Exs. A and B.

Reform 2.0 to lead session policy

In 2011, the Senate and House majorities led the way to reduce government paperwork and bureaucratic delays in the permitting process. Governor Dayton joined Senate Republicans in the initiative that produced the bipartisan effort.

Now on to the second phase of redesign/reforms – hence Reform 2.0. Government reform ideas abound and are the result of numerous outreach meetings to gather citizen input and direction. These redesign efforts are importantly about efficiency and cost control but as importantly “...getting the right services to the right people.”

More Constitutional Amendments coming?

During the 2011 Legislative Session, Senate Republicans successfully fought to allow the citizens of Minnesota to vote on the marriage amendment. No matter how Minnesotans feel individually on the issue, empowering their voice and vote is good, representative government. On the November 6th ballot, all citizens can have their voice directly heard on the important issue of marriage.

Additional constitutional amendments may be considered during this upcoming session. Photo ID for legal voting, a bipartisan redistricting commission, Freedom to Work, supermajority to raise taxes and other issues. The number of questions to be placed on the ballot is also strategically being discussed.

Jobs – Jobs – Jobs

The focus of almost every legislative action taken by Senate Republicans involves jobs and getting people to work. From the government reform issues mentioned above to holding the line on state spending to prioritized tax incentives for job creation – private sector jobs have been our focus. This session will provide many opportunities to make Minnesota a state that works – in many ways. Every bill that passes should be judged, not only on whether it is in the best interests of Minnesota, but if it makes Minnesota work.

We appreciate your involvement,
and hope you will keep in touch!



Facebook.com/MNSRC
Twitter.com/MNSRC
mnsrc.org



The Administrative Law Judge concludes that the Complainant has alleged sufficient facts to support finding a *prima facie* violation of Minn. Stat. § 211B.04. The Legislative Updates appear to meet the definition of “campaign material,” and they lack a disclaimer substantially in the form required by Minn. Stat. § 211B.04. Although the inclusion of the MNSRC logo and website address suggests that it is the entity that prepared and paid for the “Legislative Updates,” the suggestion is insufficient to substantiate the identity of the author in light of the messages from and photos of the individual senators that appear on the first page. Without the required prominent disclaimer identifying the name and address of the person or committee causing the

material to be prepared or disseminated, it cannot be determined who prepared the material. This allegation will proceed to a prehearing conference.

Minn. Stat. § 211B.09 claim

The Complainant also alleges that, “upon information and belief,” Respondents violated Minn. Stat. § 211B.09 by directing Minnesota Senate staff to design, draft and prepare the “Legislative Updates” using Senate resources.

Minn. Stat. § 211B.09 provides, in part, as follows:

An employee or official of the state or of a political subdivision may not use official authority or influence to compel a person to apply for membership in or become a member of a political organization, to pay or promise to pay a political contribution, or to take part in political activity.

In order to allege a *prima facie* violation of Minn. Stat. § 211B.09, the Complainant must put forward facts that would support finding the Respondents used their authority or influence to “compel” Senate staff to take part in a political activity. The Merriam Webster Dictionary defines “compel” to mean “to drive or urge forcefully or irresistibly;” or “to cause to do or occur by overwhelming pressure.”⁹

Even if it is assumed that designing, drafting and preparing the Legislative Updates amounts to “taking part in a political activity,” the Complainant has failed to allege any facts to support its claim that any or all of the Respondents used forceful or overwhelming pressure to *compel* Senate staffers to perform these tasks. This allegation is dismissed without prejudice.

The remaining disclaimer allegation will proceed to a prehearing conference and evidentiary hearing before a three-judge panel to be scheduled in the near future.

B.J.H.

⁹ Merriam Webster Online Dictionary.